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October 12, 2004

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

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Federal Communications Commission
Office of Secretary

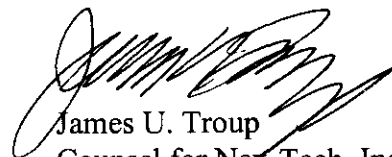
Re: Petition for Waiver of Nex-Tech, Inc.
CC Docket No. 96-45

Dear Ms. Dortch:

On behalf of Nex-Tech, Inc., transmitted herewith are an original and four (4) copies of Nex-Tech's Petition for Waiver for filing in the above-referenced docket.

Please acknowledge this submission by date-stamping and returning the extra copy of this filing. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned at (202) 857-1700.

Respectfully submitted,


James U. Troup
Counsel for Nex-Tech, Inc.

Enclosure

cc: Narda Jones, FCC
Anthony Dale, FCC
Cathy Carpino, FCC
Vickie Robinson, FCC
Cheryl Callahan, FCC
Anita Cheng, FCC
Gina Spade, FCC

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 12 2004

Federal Communications Commission
Office of Secretary

In the Matter of

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CC Docket No. 96-45

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Federal-State Joint Board on

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Universal Services

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**PETITION FOR WAIVER OF
NEX-TECH, INC.**

Pursuant to Section 1.3 of the Commission's Rules¹, Nex-Tech, Inc. ("Nex-Tech") requests that the Commission grant a waiver from the provisions of the Commission's Universal Service Fund ("USF") rules that requires adjustments to its first quarter 2003 revenue projections, so as to eliminate the effect of the first quarter 2003 projection errors in the annual true-up process.² Nex-Tech under-estimated its revenue for the first quarter of 2003 and, without waiver, would pay a higher amount than is warranted into the USF. In fact, Nex-Tech has determined that, absent waiver, its total 2003 contribution obligation is \$27,469.43 more than the appropriate amount.

On July 20, 2004, the FCC released an order in CC Docket No. 96-45 granting identical relief to AT&T, SBC Communications and Verizon.³ For the same compelling reasons supporting waivers for those carriers, Nex-Tech requests that the Commission act swiftly and grant its waiver request.

¹ 47 C.F.R. § 1.3.

² *Federal-State Joint Board on Universal Service, Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952, ¶29 (2002) [hereinafter "*2002 Report and Order*"].

³ *Federal-State Joint Board on Universal Service, Order*, 19 FCC Rcd 13580 (2004) [hereinafter "*Waiver Order*"].

I. Background.

In December of 2002, the Commission adopted a new method of calculating a service provider's contribution to the USF. This was an interim measure focused on ensuring the near term sustainability of the USF. In order to adjust for errors in revenue projections, it adopted a true-up process "to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanism based on quarterly revenue data".⁴ Among other revisions, the Commission decided to base carriers' USF contribution on projected, collected end-user interstate revenues, instead of the then existing mechanism that was based on historical, gross-billed revenues.⁵

Unfortunately, because the change became effective after the first quarter of 2003, carriers that under-projected the first quarter revenues in first quarter 2003, like Nex-Tech, will pay more than the "appropriate amount" unless the Commission changes the true-up process for first quarter 2003 or grants a waiver of these provisions. This is because the true-up process will not take into account actual revenues for that quarter but will use only forecasts.

II. Nex-Tech Has Demonstrated Good Cause for the Grant of its Requested Waiver.

Section 1.3 provides that the Commission may waive its rules "if good cause therefore is shown".⁶ Generally, a waiver is appropriate if "special circumstances warrant deviation from the general rule and such deviation will serve the public interest".⁷ A waiver is appropriate here because of the unique circumstances of the change in the rules that affect only the first quarter of

⁴ *Federal-State Joint Board on Universal Service, Order and Second Order on Reconsideration*, 18 FCC Rcd 4818, ¶ 15 (2003).

⁵ *2002 Report and Order* at ¶ 29.

⁶ 47 C.F.R. § 1.3

⁷ *Northeast Cellular Telephone Co. v FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

2003 and only companies, such as Nex-Tech, that under-projected their revenues for that quarter. This interim process clearly places Nex-Tech at an unfair disadvantage by requiring Nex-Tech to pay true-up amounts in excess of the appropriate contribution for second through fourth quarter 2003.

Section 254 of the Communications Act of 1934, as amended (Act), requires that interstate telecommunications providers contribute to the universal service mechanisms on an equitable and nondiscriminatory basis.⁸ Consistent with the intent of Section 254, this Commission found in the *Waiver Order* that “Petitioners would contribute more than an equitable share, because they would be assessed a larger true-up amount under the current true-up process than would otherwise occur, because they under projected their first quarter 2003 revenues.”⁹ This Commission went on to conclude “that the Petitioners have demonstrated special circumstances that warrant deviation from the Commission’s universal service true-up procedures for 2003” and that “this result is consistent with the public interest”.¹⁰

Nex-Tech faces the same exact circumstances as the carriers for which the Commission has granted waivers similar to that requested by Nex-Tech. Nex-Tech under-projected first quarter 2003 revenues by \$343,306. Absent a waiver of the current true-up procedures, Nex-Tech will contribute \$27, 469.43 more than its share to the USF.

III. Conclusion.

Accordingly, Nex-Tech respectfully requests that the Commission grant it a waiver and allow the USF Administrator to net out Nex-Tech’s actual first quarter 2003 revenues from its calendar year 2003 revenues to determine its actual revenues for the remainder of 2003.

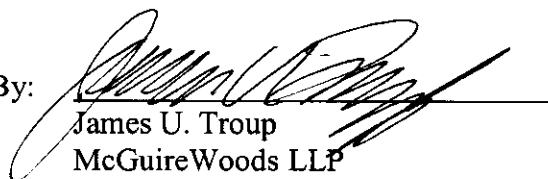
⁸ 47 U.S.C. § 254(d).

⁹ *Waiver Order* at ¶ 7.

¹⁰ *Id.*

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "James U. Troup", is written over a horizontal line.

James U. Troup

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